



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

(petitioner)

DECISION

MRA-37/54030

PRELIMINARY RECITALS

Pursuant to a petition filed July 1, 2002, under WI Stat § 49.45(5) and WI Admin Code § HA 3.03(1), to review a decision by the Marathon County Dept. of Social Services in regard to Medical Assistance (MA), a hearing was held on July 25, 2002, at Wausau, Wisconsin.

The issue for determination is whether the petitioner's community spouse may have an increase in her income allocation.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

(petitioner)

Wisconsin Department of Health and Family Services
Division of Health Care Financing
1 West Wilson Street, Room 250
P.O. Box 309
Madison, WI 53707-0309

By: Sherri Seubert, ESS
Marathon County Dept Of Human Services
400 E. Thomas Street
Wausau, WI 54403

ADMINISTRATIVE LAW JUDGE:

Kenneth D. Duren
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (SSN xxx-xx-xxxx, CARES #xxxxxxxxxx) is an institutionalized resident of Marathon County receiving MA; his wife resides in the community.
2. The petitioner receives \$706.40 from a pension and \$1,210 from Social Security, each month. His spouse receives \$424 in Social Security benefits each month. See, Exhibit #3.
3. On June 20, 2002, the county agency determined that the petitioner's cost of care liability would be, effective July 1, 2002, \$305.40 per month. See, Exhibit #4.

4. The petitioner's spouse incurs, at a minimum, the following expenses necessary to meet her minimum maintenance needs each month:

a.	Auto loan (minus amount paid for daughter's car)	\$197.48
b.	Urology Co-pay	\$ 19.25
c.	Eye Care – Preventive Care	\$ 10.00
d.	Water/Sewer	\$ 33.07
e.	WPS – Electric Utility	\$ 84.69
f.	WPS – Gas Utility	\$ 21.89
g.	Telephone Utility	\$ 73.67
h.	Real Estate Taxes – Joint	\$ 182.19
i.	Real Estate Taxes – Neil Only	\$ 56.33
j.	Radiology Associates	\$ 10.00
k.	Prescriptions – Virginia	\$ 84.57
l.	Edgar Clinic – Co-Pay	\$ 10.00
m.	Marshfield Clinic – Co-Pay	\$ 10.00
n.	Clothing	\$ 50.00
o.	Car Insurance	\$ 77.00
p.	Homeowner's Insurance	\$ 27.00
q.	Gas for Car	\$200.00
r.	Eye Care & Dental Care	\$ 50.00
s.	Rice Medical Clinic	\$ 10.00
t.	Hair Expense	\$ 50.00
u.	Lawn Mowing/Snow Shoveling	\$ 80.00
v.	Car Maintenance	<u>\$ 10.00</u>
TOTAL:		\$1,347.14

See, Exhibit 5.

5. The petitioner's wife incurs the following expenses that are not necessary to meet her minimum maintenance needs each month:

A.	Cable Television:	\$ 46.64
B.	Pet Food:	\$ 20.00
C.	Newspaper:	\$ 16.00
E.	Veterinary Bills:	\$ 20.00
F.	Auto Loan payment for daughter	<u>\$181.00</u>

TOTAL: \$283.64

See, Exhibit #5.

6. The petitioner's wife claimed to incur the following month expenses, in addition to those listed in Finding of Fact #4, above, as necessary to meet her monthly maintenance expenses:
 - a. Food \$380.00
 - b. Entertainment (Going out to eat, etc.) \$200.00
 - c. Toilet Paper \$ 10.00See, Exhibit #5.
7. The petitioner's monthly maintenance expense for food is determined to be \$300; for entertainment is \$150; and the toilet paper claim is disallowed as a separate claim and is included in the food expense.
8. The petitioner's monthly maintenance expenses are \$1,797.14.
9. The petitioner filed an appeal with the Division of Hearings & Appeals on July 1, 2002, seeking an increase in his spouse's monthly income allocation.

DISCUSSION

The petitioner lives in a nursing home and receives medical assistance while his wife remains in their family home. Medical assistance rules require nursing home residents to "apply their available income toward the cost of their care." WI Admin Code § HFS 103.07(1)(d). However, both Wisconsin and federal medical assistance laws contain provisions that grant an allowance to the spouse of institutionalized person so that the spouse does not fall into poverty. See, WI Stat § 49.455, and 42 U.S.C. §13964-5. The Community Spouse Income Allocation (CSIA) or the "allowance", is the lesser of \$2,175 or \$1,990 plus an excess shelter allowance, which is any shelter cost over \$597. MA Handbook, Appendix, §23.6.0. BPS Operations Memo, #02-23 (March 19, 2002). An allowance to prevent spousal impoverishment can be increased at a fair hearing. Because any additional amount given to the community spouse is a taxpayer-financed subsidy in the form of medical assistance, the law restricts the hearing officer's ability to raise the limit. Wisconsin law provides the following test for the exception:

If either spouse establishes at a fair hearing that, due to exceptional circumstances resulting in financial duress, the community spouse needs income above the level provided by the minimum monthly maintenance needs allowance determined under sub. (4)(c), the department shall determine an amount adequate to provide for the community spouse's needs and use that amount in place of the minimum monthly maintenance needs allowance in determining the community spouse's monthly income allowance under sub. (4)(b).

WI Stat § 49.455(8)(c). Thus a hearing officer may increase the maximum allocation ceiling only by amounts needed to allow the community spouse to avoid financial duress and to meet necessary and basic needs. This means that certain expenses that are for desirable things are rejected, as not necessary and basic.

I find that the monthly costs associated with pet care and clearly discretionary entertainment like cable television and newspapers, must be disregarded as not necessary and basic needs of the community spouse. See, Finding #5, above.

Those expenses listed in Finding #4, above, I have found to be clearly necessary and basic needs, as claimed, at a preliminary total of \$1,347.14. See, Exhibit #5.

Finally, the petitioner's wife has made rather large claims for basic and necessary expense status for the expensed delineated in Finding #6, above, without corroboration or proof. The toilet paper claim is

excessive, and is rightly included as a grocery, or “food” expense in any event. It is disallowed as a separate expense. The “Food Expense” at \$380 per month for a single person appears to be an excessive estimate for a one person household, without further verification or clearly proven medical dietary restrictions justifying higher than normal food costs. I find the allowed food expense (including the toilet paper) is to be \$300 per month. Finally, as to the “Entertainment” expense claimed at \$200, given the rather large sum allocated for food expense for one person and the claim that the entertainment expenses include dining out expenses, I find that this is to be reduced to \$150 per month. Again, this expenditure is in no way documented, and appears highly discretionary.

I conclude that her necessary and basic monthly maintenance expense has been demonstrated to be \$1,797.14 (\$1,347.14[See, list in Finding #4] + \$450 [food and entertainment expenses allowed] = \$1,797.14).

The petitioner receives gross monthly income of \$1,916.40. His community spouse receives gross monthly income of her own of \$424 per month. After deducting the petitioner’s \$45 personal needs allowance from his income stream, the agency allocated \$1,566 of his income as the community spouse income allocation to his wife, to bring her income to the current maximum allocation amount, i.e., \$1,990. The means that the agency found that the petitioner must pay the remainder of his income, \$305.40 as his patient liability each month.

After a careful analysis, I must come to the conclusion that the \$1,990 maximum allocation is fully sufficient to meet the community spouse’s demonstrated necessary and basic monthly maintenance needs, and that she has not demonstrated that exceptional circumstances resulting in financial duress exist here. The agency action is sustained, and the instant appeal seeking an increase in the CSIA is dismissed.

CONCLUSIONS OF LAW

- 1) The county agency has correctly determined the petitioner’s community spouse income allocation.
- 2) The petitioner has necessary and basic monthly maintenance needs totaling \$1,797.14, that are met by the standard maximum income allocation of \$1,990 per month.

NOW, THEREFORE, it is ORDERED

That the petition for review herein be, and are hereby is, dismissed.

REQUEST FOR A NEW HEARING

This is a final fair hearing decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a new hearing. You may also ask for a new hearing if you have found new evidence which would change the decision. To ask for a new hearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875.

Send a copy of your request to the other people named in this decision as “PARTIES IN INTEREST.”

Your request must explain what mistake the examiner made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

Your request for a new hearing must be received no later than twenty (20) days after the date of this decision. Late requests cannot be granted. The process for asking for a new hearing is in sec. 227.49 of the state statutes. A copy of the statutes can found at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed no more than thirty (30) days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

Appeals for benefits concerning Medical Assistance (MA) must be served on Department of Health and Family Services, P.O. Box 7850, Madison, WI, 53707-7850, as respondent.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for Court appeals is in sec. 227.53 of the statutes.

Given under my hand at the City of
Madison, Wisconsin, this 30th day of
July, 2002

/s/sKenneth D. Duren
Administrative Law Judge
Division of Hearings and Appeals
830/KDD